



IN THE MATTER OF)
)
Town of Opal) Docket No. 8-PWS-VIII-92-26
P.O. Box 130)
Opal, Wyoming 83124,)
)
PWSS ID WY5600835) SECOND AMENDED
) ADMINISTRATIVE ORDER
Respondent.) ON CONSENT
)
Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. § 300g-3(g))
)

FINDINGS

1. EPA has primary enforcement authority for public water systems under the Act in the State of Wyoming.
2. The Town of Opal ("Respondent") is a municipality and therefore a "person" within the meaning of 40 C.F.R. § 141.2.

3. Respondent owns and/or operates a drinking water system, the Town of Opal Water System ("System"), located in Lincoln County, Wyoming, for the provision to the public of piped water for human consumption.
4. The System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents and is therefore a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of 40 C.F.R. § 141.2.
5. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. Part 141.
6. According to a June 8, 2000, sanitary survey conducted by an agent for EPA, Respondent owns and/or operates a system that is supplied solely by a ground water source consisting of three wells, serves approximately 122 persons daily and has 39 service connections.

7. 40 C.F.R. § 141.23(a) (1) requires community ground water systems to monitor for inorganic chemicals by taking one sample at every point of entry to the distribution system which is representative of each well after treatment beginning in the initial monitoring period.
8. 40 C.F.R. § 141.62(b) (1), requires all community public water systems to comply with the maximum contaminant level (MCL) for the chemicals specified in 40 C.F.R. § 141.62(b) (1-15).
9. Respondent violated the Act by exceeding the MCL for fluoride of 4.0 milligrams per liter (mg/l). The MCL is based on an average of four samples. Specifically, Respondent's public water supply exceeded the MCL for fluoride based upon the following test results submitted by the Respondent:

<u>SAMPLE DATE</u>	<u>FLUORIDE LEVEL (mg/l)</u>
06-15-99	4.3
02-24-00	5.1
06-01-00	4.4
09-20-00	<u>4.5</u>
Avg. 4.6 mg/l	

10. EPA and the Town of Opal filed an Administrative Consent Order to address prior fluoride MCL exceedances and violations of the Act in May 1992.

11. The parties filed an Amended Administrative Order on Consent in March 1995 to further address the Town of Opal's fluoride MCL exceedences.
12. At the Respondent's request, Sunrise Engineering, Inc., performed the Opal Regional System Level II Study in October 2000 to examine the Town's fluoride exceedences and provide the Town with treatment and/or source recommendations.
13. Respondent's preferred treatment option, based on the October 2000 study, was the installation of one point-of-use ("POU") reverse osmosis unit for each residential service connection¹ served by Respondent. The POU units would treat tap water obtained from the kitchen sink, including tap water delivered to refrigerators for use by automatic ice machines. The Ordinance is attached and incorporated herein as Attachment A.
14. POU units are acceptable Small System Compliance Technology for the treatment of fluoride by small public water systems pursuant to Section 1412(b)(4)(E)(ii) of the Act, 42 U.S.C.

¹ As of the filing date of this Order, all Opal service connections are residential but for the Town Hall, the maintenance shop and the Town Park bathroom/water fountain.

§ 300g-1(b) (4) (E) (ii) , and Table 5.3 of the "Small System Compliance Technology List for Non-Microbial Contaminants regulated before 1996."

15. Respondent passed a Town Ordinance regarding POU ownership, maintenance and installation. See Attachment A.
16. EPA performed a six month pilot test from June through November 2002 to measure POU performance. At the end of the 6-month test, EPA approved the Respondent's use of POU units for treating the Town of Opal's high fluoride based on its review of the monitoring results, contingent upon the Respondent adhering to the maintenance and monitoring plan developed for the Town by EPA.
17. EPA's monitoring and maintenance plan for the Town of Opal is attached and incorporated herein as Attachment B.

ORDER

Based on the foregoing Findings and pursuant to the authority set forth in Section 1414(g) of the Act, it is hereby ORDERED and AGREED that:

1. Respondent shall continue to provide drinking water from the Town Hall or fund bottled water by a water

distributor licensed by the Wyoming Department of Agriculture to those residents with children under the age of nine years until the POU units are installed and operating appropriately in each residence served by Respondent.

2. Within sixty (60) days of the effective date of this AOC, Respondent shall complete installation of EPA-approved POU's in each home served by Respondent. Specifically, Respondent agrees to install one POU per residential service connection at the kitchen faucet.
3. Except as modified by paragraph no. 4 below, Respondent agrees to continue using or install within sixty (60) days of the effective date of this AOC POU's, including those already in existence or used in the pilot study, on the existing non-residential service connections including the Town Hall, maintenance shop and Town Park water fountain/bathroom.
4. Within sixty (60) days of the effective date of this AOC, Respondent shall either install a POU on the water fountain located in the Town Park or, alternatively, permanently disconnect the water fountain's connection to the System. Within the same timeframe, Respondent shall either install a POU on the bathroom sink located

in the Town Park or, alternatively, post a sign in the immediate vicinity of the bathroom sink noticing that the water is non-potable. Because the Town Park water fountain and bathroom are served by the same service connection, it may be permissible to dually treat the water fountain and bathroom sink water by installing a POU under the bathroom sink.

5. Respondent agrees to install a POU on the kitchen faucet of any newly-established residential service connections served by the System prior to initiating the delivery of water.
6. In the event of the establishment of any new non-residential service connections served by the System, Respondent agrees to consult with the EPA prior to initiating the delivery of water to ensure the design and installation of POU's are adequate to protect human health.
7. Respondent shall operate all POU units in accordance with the manufacturer's specifications for operation and maintenance and EPA's operation and maintenance plan (Attachment B) for as long as the System is in operation or until an alternate treatment source is proposed by Respondent and approved by EPA.

8. Respondent shall initiate sampling and develop a maintenance schedule in accordance with Attachment B within thirty (30) days after installing the POU units. Respondent shall provide a written copy of the maintenance schedule to the EPA representative named in paragraph 1 of the General Provisions section within the same thirty (30) day period. As stated in paragraph no. 7 above, Respondent shall comply with the sampling and maintenance requirements set forth in Attachment B for as long as the System is in operation or an alternate treatment is proposed by Respondent and approved by EPA.
9. Respondent shall comply with all applicable monitoring and reporting requirements set forth in 40 C.F.R. part 141.
10. Within thirty (30) days after installing the POU units, Respondent shall certify that the POU units are installed and functioning by having either the vendor or a professional engineer, licensed in the State of Wyoming, sign the following statement:

I hereby certify under penalty of perjury that a point of use device was installed in every residence on month, day, year and is operational and functional according to manufacturers specifications.

This certification must include a list of each residential address where a POU was installed. Respondent shall provide a written copy of the certification to the EPA representative named in paragraph 1 of the General Provisions section within the same thirty (30) day period.

11. No later than sixty (60) days after the effective date of this AOC, Respondent shall achieve and maintain compliance with the Fluoride MCL.

12. Following the installation of the POU units, if monitoring results for any samples exceed the MCL for fluoride of 4.0 mg/l, Respondent shall:

- (a) within twenty-four (24) hours, provide another source of water for each connection having any child under nine years of age, providing each household with at least one gallon of water per day for each child less than nine years old;
- (b) within forty-eight (48) hours take appropriate corrective action which may include but is not limited to having the POU unit(s) repaired and/or replaced. Respondent shall notify EPA in writing of each corrective action taken and of the results of all monitoring of the System since the

discovery of the MCL violation(s) within the same forty-eight (48) hour period.

- (c) Within ten (10) days after discovering the violation, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting to EPA any failure to comply with the fluoride monitoring requirements under 40 C.F.R. § 141.23.
- (d) As soon as practical but no later than thirty (30) days after Respondent learns of a fluoride MCL violation, Respondent shall provide public notice in order to return to compliance with 40 C.F.R. §§ 141.201, 141.203 and 141.205. This notice shall be given by (1) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; AND (2) any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice described above, such as publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others, posting in public places

served by the system or on the Internet, or delivery to community organizations. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but for no less than seven days. The public water system must repeat the notice every three months as long as the violation or situation persists. Respondents shall submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 CFR §141.31(d); and

- (e) Except where a different reporting period is specified in this AOC, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with the National Primary Drinking Water Regulations at 40 C.F.R. part 141 to EPA within forty-eight (48) hours.

FORCE MAJEURE

1. If any event occurs which causes or may cause delays in complying with the sixty (60) day timeframe set forth in paragraphs 2, 3 and 4 of the Order section herein, Respondent shall notify Complainant in writing within ten days of the delay or Respondent's knowledge of the

anticipated delay, whichever is earlier. The notice shall describe the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

2. If the parties agree that the delay or anticipated delay in compliance with this AOC has been or will be caused by circumstances entirely beyond the control of the Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
3. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this AOC has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in compliance shall not be excused. Respondent shall bear the burden of proving that any delay is caused by circumstances entirely beyond its control.

GENERAL PROVISIONS

1. Reporting requirements specified in this Order shall be mailed to:

Olive Hofstader
U. S. EPA Region VIII (8ENF-T)
999 18th Street, Suite 300
Denver, Colorado 80202-2466

2. This AOC does not constitute a waiver, suspension, or modification of the requirements of the Act or its implementing regulations set forth at 40 C.F.R. § 141.1 et seq., which remain in full force and effect.

Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
3. Violation of any term of this AOC may subject Respondent to an administrative civil penalty of up to \$25,000 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B) or a civil penalty of not more than \$27,500 per day of violation, assessed by the U.S. District Court, under Section 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. § 300g-3(g)(3)(A) and (C).
4. Violation of any requirement of the Act or its implementing regulations not otherwise covered under this AOC may subject Respondent to a civil penalty of not more than \$27,500 per day of violation, assessed by

an appropriate U. S. District Court, under Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

5. Respondent waives its right to a hearing on the matters contained herein pursuant to Section 1414(g) of the Act.
6. Each undersigned representative certifies that he or she is fully authorized by the party represented to enter into and bind the party to the terms and conditions of this AOC.
7. This AOC may be amended or modified only by written agreement executed by both parties and incorporated into an amended order.
8. Respondent consents to EPA's jurisdictional authority specified in this AOC.
9. This AOC, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and final settlement of the specific violations alleged herein. This AOC supercedes all previously-filed orders in this matter.

EFFECTIVE DATE

This Order shall become effective upon the date of issuance of the final order by the Regional Judicial Officer.

SO CONSENTED TO AND AGREED:

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: 2/14/03

By: SIGNED
Michael T. Risner, Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 12 February 2003

By: SIGNED
Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

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**TOWN OF OPAL
Respondent.**

Date: 4-16-2003

By: SIGNED
Tom Osborne, Mayor

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **SECOND AMENDED ADMINISTRATIVE ORDER ON CONSENT/FINAL ORDER** in the matter of **TOWN OF OPAL, DOCKET NO.: 8-PWS-VIII-92-26** was filed with the Regional Hearing Clerk on April 22, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Honorable Tom Osborne, Mayor
Town of Opal
P. O. Box 130
Opal, WY 83124

and

Kate Mead, Esq.
Mead and Mead
P. O. Box 1809
Jackson, WY 83001

April 22, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON APRIL 22, 2003.